

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

COOLING FOR LESS, INC.

and

Case 28–CA–105006

JOSEPH MILLER, an Individual

Christopher Doyle, Esq.,
for the General Counsel.
Gerald Finney, Employer Representative (pro se),
for the Respondent.

DECISION AND ORDER

STATEMENT OF THE CASE

LISA D. THOMPSON, Administrative Law Judge. This hearing was held telephonically on March 17, 2015.¹

On May 8, 2014, the National Labor Relations Board (NLRB or the Board) issued its unreported Decision and Order, finding that Cooling for Less, Inc. (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (NLRA or the Act).² In that Order, the Board required Respondent to, *inter alia*, make discriminatee Joseph Miller (Charging Party or Miller) whole for any loss of earnings plus interest and other benefits resulting from the discrimination against him. On August 21, 2014, the United States Court of Appeals for the Ninth Circuit enforced the Board's Order in full.³ Respondent has made no payments to satisfy its obligation under the Board's Order enforced by the Ninth Circuit.

When Respondent failed to comply with the Board's Order and the Ninth Circuit's judgment, on January 8, 2015, the Regional Director for Region 28 (the Region) issued the initial compliance specification and notice of hearing alleging the amount of backpay plus interest due to the discriminatee.⁴ Respondent failed to timely answer or otherwise object to the backpay calculations in the compliance specification by January 29, 2015.

However, the Region realized it served the compliance specification and notice of hearing to an incorrect address for Respondent. On February 5, 2015, the Region served its compliance specification and notice of hearing on Respondent at its correct mailing address.⁵ The Region also extended the deadline for Respondent to answer to February 26, 2015. However, Respondent again failed to timely answer or object to the backpay calculations in the compliance specification.

¹ See *Ironworkers Local 843 (Norglass, Inc.)*, 322 NLRB 29 (1988).

² GC Exh. 1(a). Abbreviations used in this decision are as follows: "GC Exh." for the General Counsel's Exhibits.

³ GC Exh. 1(c).

⁴ GC Exh. 1(d).

⁵ GC Exh. 1(f).

On February 27, 2015, counsel for the General Counsel (CGC) sent a letter to Respondent, via its representative, informing Respondent that it had until March 6, 2015, to file an answer to the Region's compliance specification and notice of hearing, otherwise the Region would file a motion for default judgment against Respondent.

On March 2, 2015, I held a prehearing telephone conference with the parties to clarify all relevant issues and discuss the hearing procedures in this matter. The parties were previously advised of the date and time of the teleconference and were provided with the conference call-in information. While the CGC appeared for the conference, Respondent did not. Respondent also failed to file or respond to the compliance specification by March 6, 2015.

Given Respondent's failure to appear or defend itself whatsoever in this matter, on March 11, 2015, I issued an Order Regarding Hearing notifying the parties that the hearing scheduled for 9 a.m. Pacific Time on March 17, 2015, would be held telephonically. The parties were informed of the time and location to appear and participate at the hearing.⁶

On March 12, 2015, the CGC moved to amend the compliance specification with current backpay calculations and tax withholdings through 2015.⁷ The CGC also filed a motion for default judgment, arguing that Respondent has failed to respond, answer or otherwise object to the backpay calculations in the compliance specification.⁸ Both motions were duly served on Respondent at its current address of record. Respondent did not answer, object or otherwise respond to either motion.

On March 17, 2015, at 9:05 a.m., I opened the record in this matter. The CGC and Charging Party Miller appeared at the hearing. However, Respondent did not appear at the time and place set forth in my Order Regarding the Hearing. After the CGC described what I find were sufficient efforts to include Respondent in the hearing, I proceeded with the hearing and the CGC submitted its evidence regarding the amended compliance specification and the motion for default judgment.⁹

RULING ON MOTION FOR DEFAULT JUDGMENT

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the Respondent "fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate." Section 102.35(a)(8) also allows the administrative law judge (ALJ) to find the specifications to be true when no answer has been timely filed and enter the appropriate order upon the filing of a Motion for Summary Judgment (a/k/a, motion for default judgment).

In this case, Respondent does not dispute that, despite having been advised of the filing requirements, it failed to file an answer to the compliance specification. In fact, Respondent has failed to appear or defend itself at any time during the pendency of this matter despite being given ample time to do so. Moreover, Respondent offers no explanation for not filing an answer or not participating in this case. I further find no reason to delay this Order by providing Respondent with time to show cause why it

⁶ GC Exh. 1(h).

⁷ GC Exh. 1(i).

⁸ GC Exh. 1(j).

⁹ The General Counsel's motion to amend compliance specifications was granted on the record.

has not answered the compliance specification, the amended compliance specification, or the motion for default judgment since Respondent has demonstrated a pattern of failing to respond to any pleadings or instructions in this case.

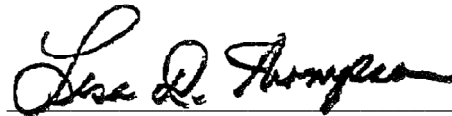
Accordingly, I deem the allegations in the compliance specification and amended compliance specification to be admitted as true because Respondent failed to deny them. Further, I grant the General Counsel's Motion for Default Judgment due to Respondent's failure to answer.¹⁰

Based on my review of the amended compliance specification, I find that the Region properly calculated the net backpay due to the discriminatee Miller. The amount of net backpay that the General Counsel has calculated for Joseph Miller is \$24,810. The General Counsel has established that those amounts are due to the discriminatee for the period from May 10, 2013 to March 12, 2015. Based on the foregoing, I issue the following recommended:

ORDER

Respondent Cooling for Less, Inc., its officers, agents, successors, and assigns, shall make whole Joseph Miller, for the period from May 10, 2013 to March 12, 2015, by paying him \$24,810, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State laws as set forth in appendixes A-C in the amended compliance specification.

Dated: Washington, D.C. March 19, 2015



Lisa D. Thompson
Administrative Law Judge

¹⁰ See *Met Hotel Detroit/Troy*, 360 NLRB No. 75 (2014).